



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001

TAL: 139
Docket No: 3356-08
October 7, 2014

THE HONORABLE PETER J ROSKAM
MEMBER UNITED STATES HOUSE
OF REPRESENTATIVES
2700 INTERNATIONAL DRIVE STE 304
WEST CHICAGO IL 60185

Dear Congressman Roskam:

This is in reply to your correspondence concerning one of your constituents and a former member of the Navy, Mr. (b) (6). (b) (6)

The Board considered and denied Mr. (b) (6) request for corrective action on January 6, 2009. A copy of the Board's letter informing him of the denial is enclosed for your information.

Thank you for your interest in the Board for Correction of Naval Records. Please do not hesitate to contact me if you need further assistance.

Sincerely,

(b) (6)

Executive Director

Enclosure



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 3356-08
6 January 2009

(b) (6)

Dear Mr. (b) (6):

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 January 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 29 February 2000 at age 22. You then served without incident for about 11 months. In January 2001 you were an unauthorized absentee for about five days for which there is no disciplinary action in the record. On 31 July 2001 you were convicted by a summary court-martial of an unauthorized absence of about 35 days. On 13 November 2002 you began another period of unauthorized absence which lasted until you were apprehended on 23 April 2004, a period of about 527 days.

Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the 527 day period of absence. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged under other than honorable conditions on 6 May 2004.

In its review of your application, the Board carefully weighed

all potentially mitigating factors, such as your periods of good service and desire to again serve in the military. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Concerning your request for a change in the reenlistment code, you should be aware that the only authorized code when an individual is discharged for the good of the service is an RE-4. Since you have been treated no differently than all others discharged for that reason, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

(b) (6)

